

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINERS DOCUMENT NO. 261-94-4856-D1
Issued to: Alan D. Williams

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2347

Alan D. Williams

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 26 January 1983, and Administrative Law Judge of the United States Coast Guard at New York, NY suspended Appellant's seaman's documents for one month, plus two months on nine months' probation, upon finding him guilty of misconduct. The specifications found proved allege that while serving as Qualified Member of the Engine Department (QMED) on board the SS CHESTNUT HILL under authority of the document above captioned, on or about 9 December 1982, Appellant uttered abusive language toward the Third Assistant Engineer and on or about 29 November 1982 failed to stand his assigned watch.

The hearing was held at Philadelphia, PA on 12 January 1983.

At the hearing, Appellant was represented by non-professional counsel and entered a plea of guilty to the charge and specification alleging failure to stand his watch and not guilty to uttering abusive language to the Third Assistant Engineer.

The Investigating Officer introduced in evidence the testimony of three witnesses and three exhibits.

Appellant offered no evidence in defense.

After the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and both specifications had been proved. He then served a written order on Appellant suspending all documents issued to Appellant for a period of one month plus two months on nine months' probation.

The entire decision was served on 4 February 1983. Appeal was timely filed on 23 February 1983 and perfected on 15 March 1983.

FINDINGS OF FACT

Between 27 September 1982 and 11 January 1983, Appellant was

serving as a Qualified Member of the Engine Department on board the United States SS CHESTNUT HILL and acting under the authority of his document.

Appellant was assigned the 1600-2000 QMED watch on the 29th of November 1982. Appellant had a verbal agreement with the 0800-1200 QMED watchstander which provided that he would stand the 1600-2000 watch if Appellant were not aboard by 1600. This agreement was not cleared with the Watch Officer, First Assistant or Chief Engineer. Appellant was not aboard by 1600 and the 0800-1200 QMED watchstander did not stand Appellant's watch.

On 9 December 1982 there was fire and a boat drill held aboard the vessel. The Third Assistant Engineer testified that he encountered Appellant after leaving the Emergency Foam Room enroute to #1 lifeboat and that Appellant state "I know why Milton wanted to kick your a__ because you are a chicken s__t and a m_____ f_____ punk... I'm going to get you." There was no third party testimony to the allegations.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that:

1. the Administrative Law Judge erred in his finding because they were based on hearsay;
2. the Administrative Law Judge gave more weight to the testimony of the Third Assistant Engineer than was warranted.

APPEARANCE: Pro se

OPINION

I

Appellant contends that the Administrative Law Judge erred in basing his findings on hearsay. I disagree.

The evidence complained of is the testimony of the Third Assistant Engineer. He was an eyewitness to the incident and testified to what he saw and heard. This is not hearsay and the record reveals that there was no hearsay evidence introduced that supported the allegation of using abusive language to the Third Assistant Engineer. This basis of appeal is without merit.

II

Appellant contends that the Administrative Law Judge gave the

testimony of the Third Assistant Engineer undue weight. There is no merit to this contention.

It is the function of the Administrative Law Judge to determine the weight of the evidence. Unless his determination is unreasonable, it will not be disturbed. Appeal Decision No. 2302 (FRAPPIER). There was no evidence offered in rebuttal to the testimony of the Third Assistant Engineer. Appellant did not testify in his own behalf. Therefore, the Administrative Law Judge had only the testimony of the Third Assistant Engineer regarding the alleged use of abusive language by Appellant.

Under the circumstances, it was reasonable for the Administrative Law Judge to believe the Third Assistant Engineer. It is much too late for Appellant to urge on appeal that the testimony of the witness was inaccurate and should not have been believed. Decision on Appeal No. 2279 (LEWIS).

CONCLUSION

There is substantial evidence of a reliable and probative character to support the findings that the charge and specifications are proved. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 26 January 1983, is AFFIRMED.

B. L. Stabile
VICE COMMANDANT

Signed at Washington, D.C., this 11th day of April 1984.